IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5249 OF 1993

Shri Sharad Narayan Deshpande, .. Petitioner.

Vs

1. Principal Mudhoji College Phaltan

and ors. .. Respondents

Mr. R.S.Apte, for the petitioner.

Mr.A.B.Vagyani, for respondent nos 1 to 3.

Mrs.S.S.Bhende, for respondent nos 5 to 6.

Mr R.K.Ketkar, for respondent no.4.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.

DATE : APRIL 28, 2006.

PC:

1. By this petition filed under Article 226 of the Constitution, the petitioner seeks a writ of mandamus against respondent no.4-University for granting him approval as a full time lecturer from 1973 and to pay him salary as a full time lecturer from 1973 by following the Government Resolution dated 21.7.1983. The petitioner consequently challenges the communication dated 17.11.1989 addressed by the University, Pune through the Principal of Mudhoji College, Phaltan (respondent no.2) and also the communication dated 20.4.1992 addressed by the University

to the petitioner informing him that his part time service from the years 1977 to 1982 cannot be treated as full time regular service.

2. The petitioner died on 16.1.2003 and, therefore, the learned counsel for the petitioner sought time to bring his legal representative on record as he would be entitled to receive pensionary/monetary benefits if the petition succeeds. On the face of the affidavit-in-reply submitted by the Administrative Officer, Higher Education Grants, Kolhapur Region, Kolhapur on 21.10.1994, the petition itself fails and we briefly state reasons as under.

3. The petitioner obtained his B.Com degree in 1953, B.A degree in 1960 and LL.B degree in 1961. He started teaching on part time basis at Pune in Brihman Maharashtra College of Commerce from 1962 and subsequently he started teaching on part time basis from 1.7.1982 at the respondent no.2-college. By a letter dated 3.1.1974 respondent no.4-University had granted approval to the part time employment of the petitioner from 12.7.1973 and on a consolidated pay of Rs.450/- per month. He continued as such till 30.6.1982 and his appointment as a full time lecturer in the pay scale of Rs.700-1600 was approved with effect from 1.7.1982. The petitioner’s date of birth was

8.10.1929 and, therefore, he reached the age of superannuation on 31.10.1989 and retired from that date. Under Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982, a minimum of ten years of service as a full time employee is the qualifying condition for being eligible to receive the pension and the petitioner did not fulfil the said condition.

4. It appears sometimes in November 1987, respondent no.1 approached the Director of Higher Education, Government of Maharashtra, recommending the case of the petitioner as a full time lecturer from the academic year 1973-74 and the said college submitted further details on 8.5.1988 as were sought from the Administrative Officer, Higher Education Grants, vide his letter dated 16.3.1988. The petitioner, for the first time, submitted a letter to the University on 8.8.1989 and prayed for his appointment as a full time lecturer from 12.7.1973. The Administrative Officer informed the petitioner that the case of the petitioner for regularising him as a fulltime teacher from 1973 could not be considered because as per the University's record he was a part time lecturer from 1973 till June, 1982. Respondent no.4-University also clarified the same vide its letter dated 17.11.1989. The petitioner submitted yet another representation on 4.12.1989 to the University and on 20.4.1992 he was

informed that his services as part time lecturer prior to July,1982 cannot be regularised as a full time lecturer. It is thereafter the petitioner approached this Court.

5. Though the petitioner has relied upon the State Government Resolution dated 21.7.1983 extending pension-cum-gratuity scheme to the teaching and nonteaching University and the affiliated non-government colleges, he did not place on record a copy of the said Government Resolution. Along with the affidavit-in-reply of Mr.Navasare a copy of the Government Resolution has been annexed and it is clear that the said G.R. does not support the cause of the petitioner for regularising the services prior to July, 1982 as a full time lecturer. The issue, which was foreclosed in July, 1983 was sought to be agitated some time in the year 1987-88 and from time to time the University and Administrative Officer,Higher Education Grants, Kolhapur had informed the petitioner as well as the College that his earlier service could not be taken as a full time teacher and more so he was all along approved as a part time teacher from 1973 to June, 1982 and unless this issue was decided in favour of the petitioner, his plea for pension does not find support.

6. As there is no prima facie case to succeed in this petition, we do not see any reason to entertain the

application for bringing the legal heir and representative of the petitioner on record and we dismiss the petition.

7. We clarify that in case there are any claims of monetary benefit pending with the concerned authorities as at present, the same shall be cleared as expeditiously as possible and in any case within a period of three months from today.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**